

# Sumter City-County Board of Zoning Appeals

November 9, 2011

**BOA-11-22, 401 E. Calhoun Street**  
**(City)**

The applicant is requesting a variance from the strict application of Article 8, Section J; 8.j.3.b Design Requirements of the Sumter City Zoning Ordinance in order to use alternate parking surface material.



Appeals - Variance - Special Exception

# Sumter City-County Board of Appeals

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**BOA-11-22, 401 E. Calhoun St. (City)**

## **I. THE REQUEST**

**Applicant:** New Birth Church of God in Christ

**Status of the Applicant:** Property Owner

**Request:** A variance from the strict application of Article 8, Section J; 8.j.3.b Design Requirements for Parking of the Sumter City Zoning Ordinance in order to use alternate parking surface material.

**Location:** 401 E. Calhoun St.

**Present Use/Zoning:** Vacant Commercial / GC / HCPD

**Tax Map Reference:** 249-07-04-003

## **II. BACKGROUND**

The applicant, New Birth Church of God in Christ, is requesting a variance from the requirement to install paved parking with concrete curb and gutter on a +/- 1.13 acre commercial property located on E. Calhoun St. in Sumter. The Church was donated this building and they would like to use this facility as a fellowship hall for their members. They plan to use the facility on an occasional basis not on a daily or even a weekly basis. The photograph *below* shows a view of the current parking area and structure.



Site development at 401 E. Calhoun St. predates the current Zoning Ordinance. Due to the age of construction, the site is non-conforming with respect to paving material, landscaping and bufferyards, site access, and building setbacks.

The building is +/-2309 sq. ft. and was previously used as a gift shop, and there is an active business license for this use at this location. The proposed use for this site is for a fellowship hall for an existing church located on West Oakland Ave.



*Above left*, an aerial view of the parcel from 2007.

*Above right*, the estimated location of wetlands on the site. The above diagram is taken from the national wetlands inventory maps and indicates that wetland conditions may exist on the property. The parcel is also entirely in FEMA flood zone AE, as indicated by the blue tinged area as shown.

Because this is an existing nonconforming site with continued business activity within the 18 month time limitation, the only thing that triggers an upgrade of the parking is that the proposed change in use from gift shop to fellowship hall requires an increase in parking number by 10% per Section 8.j.2.b. of the City Zoning Ordinance. This is the reason the applicant is being required to pave the parking lot.

Section 8.j.3.b states:

**8.j.3. Design Requirements:**

***b. Surfacing, Drainage and Maintenance:*** Off-street parking facilities shall be properly graded for drainage to prevent damage to abutting property and/or public streets and alleys. ***Parking lots shall be surfaced with asphalt, concrete, or other surfaces approved by the Sumter City-County Planning commission. Off street parking lots shall include concrete curbs and gutters, maintained in a clean, orderly and dust-free***



*condition, and not used for the sale, repair or the dismantling or servicing of any vehicles, equipment, materials or supplies.*

The parcel in question is completely located in the 100-year floodplain. The City of Sumter Flood Damage Prevention Ordinance states as its purpose that “...*Wherever possible, the natural characteristics of floodplains and their associated wetlands and water bodies should be preserved and enhanced.*” And also: 400.3- *All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages;* Impervious surfaces such as asphalt or concrete pavement would detract from the permeable quality of soils on this site and potentially contribute to flooding hazard. Placing this type of fill is discouraged and if allowed would require extensive engineering to comply with this Ordinance.

There is a small existing parking area with asphalt located in front of the site but not sufficient enough to meet the parking requirements. This variance is requested in order to specifically preserve the green infrastructure of the site and use the rear as a parking area.



**Above:** Photo of site showing existing paved area.

Based on the square footage of the building and the proposed use as a fellowship hall, the parking requirements for this facility are 40 parking spaces, including 1 **paved** handicapped van-accessible space. This parking area will be located in the area behind the building with the van accessible handicap space located close to the main front entrance.



**Above:** Photo of grassed area behind building where proposed parking will be located. There is sufficient space for 40 cars.

### III. THE REQUEST

The applicant is seeking variances from the paved parking requirements because of the floodplain conditions on the parcel. If the variance for surface materials is granted then the applicant is required to go through Minor Site Plan review where they will be required to submit a detailed site plan designating actual parking spaces by using method such as car stops or bumpers and a landscaping plan.

In order for the Board of Appeals to grant a variance from the Zoning Ordinance, the proposed variance request must meet all four-parts of a State mandated four-part test. When reviewing a variance request, the Board may not grant a variance that would do the following:

- Allow the establishment of a use not otherwise permitted in a zoning district;
- Extend physically a nonconforming use of land;
- Change zoning district boundaries shown on the Sumter City-County Official Zoning Map.

The fact that a property may be utilized more profitably should a variance be granted shall not be considered grounds for approving a variance request.

### IV. FOUR-PART TEST

**1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property.***

- There are extraordinary or exceptional conditions pertaining to this particular piece of property based on the following:

The property is completely within the 100-year floodplain. Fill material and additional impervious surface in the floodplain is highly discouraged because it takes away flood storage.

**2. *These conditions do not generally apply to other property in the vicinity.***

- These conditions *do* not generally apply to other properties in the vicinity based on the following:

This entire district is located in a Zone AE Floodplain. However, much of the surrounding vicinity is either existing non-conforming structures, or undeveloped land. Under current floodplain regulations these adjacent developments may remain nonconforming so long as no new development or substantial improvements take place on-site.

**3. *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.***

Absolute application of the ordinance requirement ***will prohibit*** or unreasonably restrict the utilization of this property due to the following:

- The City of Sumter Flood Damage Prevention Ordinance states that “...*Wherever possible, the natural characteristics of floodplains and their associated wetlands and water bodies should be preserved and enhanced.*” And also: 400.3- *All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages*; Paving the parking area would decrease the permeability of the site and potentially create a flood hazard.
- 4. *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.***
- Developing this property with the requested variances *will not be* of substantial detriment to adjacent property or to the public good. The intent of the Section 8.j.2.b of the Zoning Ordinance is to remove or eliminate non-nonconforming parking and implement landscaping standards at structures and sites that do not currently comply with regulations based on new proposed uses or increases in floor area. Theoretically, sites should be redesigned or retrofitted as directed by the ordinance to meet the current standards of the ordinance, however; there are rare occasions when incremental and reasonable improvements to overwhelmingly non-conforming sites better meets the public good than partial or complete vacancy on a parcel. In addition, environmental factors are present on site (i.e. floodplain) that require an alternative approach to traditional development in order to preserve the community’s green infrastructure while ensuring continued utility of previously developed land.

## **V. STAFF RECOMMENDATION**

Staff recommends approval of BOA-11-22.

## **VI. DRAFT MOTIONS for BOA-11-22**

- A.** I move that the Sumter Board of Appeals approve BOA-11-22 subject to the findings of fact and conclusions contained in the draft order dated November 9, 2011, attached as Exhibit 1.
- B.** I move that the Sumter Board of Appeals deny BOA-11-22 on the following findings of fact and conclusions:

## **VII. ZONING BOARD OF APPEALS – NOVEMBER 9, 2011**

The Sumter City-County Board of Appeals at its meeting on Wednesday, November 9, 2011, voted to accept staff recommendation and approve this request subject to the findings of fact and conclusions as shown on Exhibit 1.

**Exhibit 1**  
**Order on Variance Application**  
**Sumter Board of Appeals**

**BOA-11-22, 401 E. Calhoun St. (City)**  
**November 9, 2011**

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Date Filed: November 9, 2011

Permit Case No. BOA-11-22

The Board of Zoning Appeals held a public hearing on Wednesday, November 9, 2011 to consider the request of New Birth Church of God in Christ, 307 West Oakland Ave., Sumter, SC 29150 for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant ☒ **has** - ☐ **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

The property exists in a floodplain area. Paving the parking area would greatly increase the risk of environmental damage to this area.

2. The Board concludes that these conditions ☐ **do** - ☒ **do not** generally apply to other property in the vicinity based on the following findings of fact:

This parcel is completely within Flood Zone AE. Adjacent parcels are either undeveloped or existing non-conforming sites that, under current floodplain regulations, may remain nonconforming so long as no new development or substantial improvements take place.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property ☒ **would** - ☐ **would not** effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

The new tenant would not be able to establish this facility without applying the necessary parking requirements per the ordinance. Granting this variance will allow the applicant to develop the site in a more environmentally sensitive manner.

4. The Board concludes that authorization of the variance ☐ **will** - ☒ **will not** be of substantial detriment to adjacent property or to the public good, and the character of the district ☐ **will** - ☒ **will not** be harmed by the granting of the variance based on the following findings of fact:

Developing this property with the variances *will not be* of substantial detriment to adjacent property or to the public good. The intent of the Section 8.j.2.b of the Zoning Ordinance is to remove or eliminate non-nonconforming parking and implement landscaping standards at structures and sites that do not currently comply with regulations based on new proposed uses or increases in floor area.

Theoretically, sites should be redesigned or retrofitted as directed by the ordinance to meet the current standards of the ordinance, however; there are occasions when existing environmental site conditions merit the use of alternate materials that further the community's stated goal of protecting existing green infrastructure.

THE BOARD, THEREFORE, ORDERS that the variance is ☐ DENIED –☒ GRANTED, subject to the following conditions:

Approved by the Board by majority vote.

Date issued: \_\_\_\_\_

\_\_\_\_\_  
Chairman

Date mailed to parties in interest: \_\_\_\_\_

\_\_\_\_\_  
Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.**